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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 326

METLAKATLA INDIAN COMMUNITY,
ANNETTE ISLAND RESERVE, *Appellant*,

vs.

EGAN, GOVERNOR OF ALASKA, et al.

No. 327

ORGANIZED VILLAGE OF KAKE, et al., *Appellants*,

vs.

EGAN, GOVERNOR OF ALASKA

On Appeal from the District Court for the District of Alaska

BRIEF FOR APPELLANTS IN NO. 327 ORGANIZED VILLAGE OF KAKE, AND ANGOON COMMUNITY ASSOCIATION

JOHN W. CRAGUN,
1616 H Street, N. W.
Washington 6, D. C.
Counsel for Appellants in No. 327

FRANCES L. HORN,
Wilkinson, Cragun & Barker,
Of Counsel

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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METLAKATLA INDIAN COMMUNITY, etc. (No. 326)

ORGANIZED VILLAGE OF KAKE, et al. (No. 327)

vs.

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BRIEF FOR APPELLANTS IN NO. 327 ORGANIZED VILLAGE OF KAKE, AND ANGOON COMMUNITY ASSOCIATION

OPINIONS BELOW

The opinion of Kelly, J., of the District Court for the District of Alaska[1] appears in the Record at pp.

[1] So named in the statutes creating the court (Act of May 17, 1884, § 3, 23 Stat. 24; restated Act of June 6, 1900, § 4, 31 Stat. 321, 322, as amended, 48 U.S.C. § 101). This caption was used by the judge below on his opinion (R. 58). The same name was used in the latest expression of the State of Alaska through its legislature—which, if the contentions of the parties that the court is a *state* court are correct, should be conclusive. That is so especially since the Alaska legislature advertently changed its

59-66, and is reported in 174 F.S. 500. Supplemental Findings of Fact appear at pp. 67-69 of the Record. The opinion of Mr. Justice Brennan, as Circuit Justice, upon a temporary restraining order pending appeal is not officially reported but appears in 4 L. ed 2d 34, and 80 Sup. Ct. 33.

JURISDICTION

Formal Matters.—Jurisdiction of this Court is invoked under § 1257 of the Judicial Code, subpars. (1) and (2). The District Court for the District of Alaska announced its opinion on July 1, 1959, pursuant to which the complaints of these appellants in No. 327 were to be dismissed. R. 59-66. Oral notice of appeal was placed in the record at that time. R. 57-58. Written orders dismissing the complaints of these appellants were entered July 2, 1959 (as to Organized

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reference to the name in an earlier statute (Chap. 50 Sess. L. Alaska 1959, below) by amending it to read by this name. Chap. 151 Sess. L. Alaska 1959.

But the court has gone by various other names. Cf. "District Court for the Territory of Alaska", Statehood Act, §§ 13-18, and Proclamation of the President of February 20, 1960, 25 F.R. 1584; "District Court of the State of Alaska", chap. 50 Sess. L. Alaska 1959, § 31(1) (amended as above referred to). In titling the record, this Court's Clerk has also referred to the appeals from the "District Court of the State of Alaska" which, in view of the fact that the court is a post-admission state court, as is developed below, cannot be regarded as incorrect. Note that the judge has signed himself either "U.S. District Judge" (R. 66) or simply "District Judge" (R. 70).

Usually in this brief the court whose judgment is to be reviewed is referred to as the "transitional court" to identify that court during the period after the statehood of Alaska and before the court became *functus officio* on the establishment of the new District Court of the United States for the District of Alaska pursuant to the Statehood Act (Act of July 7, 1958, 72 Stat. 339, §§ 12, 18).

Village of Kake, S.R. 125, and as to Angoon Community Association, S.R. 126). After a stay granted by the Circuit Justice (accompanied by an opinion of Mr. Justice Brennan, July 1, 1959), these appellants also filed written notices of appeal on August 5, 1959 (S.R. 79). Appellee moved to affirm or dismiss; and by order of this Court of December 7, 1959, further consideration of jurisdiction was postponed to the hearing on the merits, and these cases were consolidated with that of the Metlakatla Indian Community, No. 326.

The Court Below Was the Highest Court in Which a Decision Could Be Had.—The court whose judgment is to be reviewed has ceased to exist. It was established by Act of May 17, 1884, § 3, 23 Stat. 24, restated in the Act of June 6, 1900, § 4, 31 Stat. 321, 322, as amended, quoted in our appendix from 48 U.S.C. § 101. It was a territorial court "with general jurisdiction in civil, criminal, equity and admiralty causes" and, as this Court observed in *Steamer Coquitlam* v. *United States* (1896), 163 U.S. 346, 352, was, in every substantial sense, the Supreme Court of the territory. Its judges were appointed for four-year terms rather than during good behavior. Sec. 10 of the 1900 Act (48 U.S.C. § 112). As a result, the court was a legislative, not a constitutional Art. III, court of the United States. *McAllister* v. *United States,* 141 U.S. 174, 179-186 (1891); *Summers* v. *United States,* 231 U.S. 92, 101-102 (1913). Cf. *International Longshoremen's & Warehousemen's Un.* v. *Juneau Spruce Corp.,* 342 U.S. 237, 240-243.

That court's existence survived the admission of the State of Alaska as a necessary transitional matter, pursuant to the Constitution of Alaska and pursuant

to the federal Statehood Act. The Constitution of Alaska, Art. IV, § 2, established a supreme court with final appellate jurisdiction, and, § 3, a superior court, which is a trial court of general jurisdiction. By Art. XV, referring to transitional measures, the Constitution provided for the continuance of all actions and suits (§ 2) and also provided (§ 17):

> "SECTION 17. Until the courts provided for in Article IV are organized, the courts, their jurisdiction, and the judicial system shall remain as constituted on the date of admission unless otherwise provided by law. When the state courts are organized, new actions shall be commenced and filed therein, and all causes, other than those under the jurisidction of the United States, pending in the courts existing on the date of admission, shall be transferred to the proper state court as though commenced, filed, or lodged in those courts in the first instance, except as otherwise provided by law."

That is to say, the state-court functions of the old territorial court, the court below, would be abolished when the new courts were organized. By statute not long after admission, Alaska provided that the courts should be deemed "organized" pursuant to § 17 on January 3, 1962, though new cases might be filed as soon as one or more judges were appointed in a particular judicial district. Act of March 19, 1959, chap. 50 Sess. L. Alaska 1959, pp. 30-37, § 31(1), p. 36. The same section provided that until January 3, 1962, the jurisdiction of the state courts should be non-exclusive,

> ". . . and nothing in this Act shall diminish or deprive the District Court of the State of Alaska or the Court of Appeals or the Supreme Court of the United States of jurisdiction as provided by [the Statehood Act] . . ."

Subsec. (4) provided that if it were held that the District Court of the State of Alaska lacks jurisdiction to determine causes under laws of the state, then the appointment of superior and supreme court judges should be accelerated. About two months later, this act was amended to add a further condition under which appointments of judges should be accelerated—namely, if it were finally determined that the United States Court of Appeals for the Ninth Circuit lacks jurisdiction to hear appeals from the District Court of the District of Alaska.[2] Chap. 151 Sess. L. Alaska 1959, pp. 195-196. This latter contingency was realized. The Court of Appeals for the Ninth Circuit ruled that it had no jurisdiction to review judgments of the District Court for the Territory of Alaska after statehood, *Parker* v. *McCarrey,* 268 F. 2d 907 (June 16, 1959). In a series of decisions by that circuit, it was made clear that this denial of jurisdiction extended both to cases arising under federal law (and ordinary grist for a federal district court), and to cases arising under local law.[3] We are not aware that any effort was made to bring any of these cases to this Court.

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[2] The amendment also changed the reference to the transitional court from "District Court of the State of Alaska" to "District Court of the District of Alaska".

[3] Parker v. McCarrey itself was an application for prohibition and mandamus to stop proceedings in the transitional court where petitioner was awaiting trial on an indictment charging theft of U.S. Government property. The following day the Court of Appeals dismissed an appeal in a typically local-law situation in which defendant was charged with an offense committed prior to statehood but was tried in the district court following Alaska's admission. Deere v. United States (C.A. 9th, June 17, 1959), 268 F. 2d 912. Appeals were also dismissed the same day in Selid Constr. Co. v. Guarantee Ins. Co., 268 F. 2d 913; and Kosters v. United States, 268 F. 2d 913. Some months later (September) the same court dismissed an appeal in a motor-vehicle-removal case,

The federal Statehood Act had cognate provisions respecting the old territorial district court as a transitional court. Act of July 7, 1958, Pub. L. 85-508, 72 Stat. 339. A brand-new United States District Court was established under the Judicial Code effective upon admission of the State, § 12. No civil or criminal case was to abate because of admission of the state. § 13. Cases arising before admission were to be prosecuted "in the appropriate State courts or in the United States District Court for the District of Alaska" just "as if said State had been created and said courts had been established prior to the accrual of said causes of action." § 13, ¶ 2. All pending cases of such nature as to be within the jurisdiction of a district court of the United States were to be transferred to the United States District Court for the District of Alaska; "All other causes pending or determined in the District Court for the Territory of Alaska at the time of the

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Jackson v. United States (1959), 270 F. 2d 384. Extraordinary writs met the same fate for lack of jurisdiction, Emberg v. McCarrey (C.A. 9th, June 17, 1959), 268 F. 2d 913. Not so with a judgment in a criminal case entered prior to statehood; there, the court felt, it retained jurisdiction under 28 U.S.C. §§ 1291 and 1294. Short v. United States (C.A. 9th, 1959), 271 F. 2d 73. A somewhat anomalous case is Soby v. Johnson (C.A. 9th, September 8, 1959), 270 F. 2d 193, 197, where despite the fact that the court had Parker v. McCarrey in mind (p. 197) it noted that no question had been raised as its own jurisdiction, and proceeded to dispose of an appeal on the merits, overruling a contention going to the power of the transitional court to exercise powers of a United States District Court.

The status of the transitional court was rather extensively briefed in this Court at the last term, Kilpatrick v. McCarrey, No. 856 Misc. O.T. 1958, leave to file a petition for writ of prohibition and mandamus denied June 22, 1959, 360 U.S. 914. That case did not touch the question whether the Ninth Circuit lacked jurisdiction to hear appeals from the transitional court, postulated in Chap. 151 Sess. L. Alaska 1959, referred to in the text, the questions raised relating only to the jurisdiction or powers of the transitional court.

admission of Alaska as a State shall be transferred to the appropriate State court of Alaska." § 15. But by § 18 it was declared—

> "The provisions of the preceding sections with respect to the termination of the jurisdiction of the District Court for the Territory of Alaska, the continuation of suits, the succession of courts, and the satisfaction of rights of litigants in suits before such courts, shall not be effective until three years after the effective date of this Act, unless the President, by Executive order, shall sooner proclaim that the United States District Court for the District of Alaska, established in accordance with the provisions of this Act, is prepared to assume the functions imposed upon it. During such period of three years or until such Executive order is issued, the United States District Court for the Territory of Alaska shall continue to function as heretofore. . . ."

On February 20, 1960 (25 F.R. 1584) the President proclaimed that the United States District Court for the District of Alaska was prepared to assume its functions; "Accordingly, the jurisdiction of the District Court for the Territory of Alaska and the tenure of the judges, the United States attorneys, marshals and other officers of that court are now terminated."

When appellants filed their suit in the transitional court June 22, 1959, when the complaints were dismissed, and when the formal written notice of appeal was filed August 25, 1959, it was the *only* court, state or federal, to which recourse might be had. To be sure, other courts, state and federal, had been "established", or provided for, upon the admission of the State of Alaska which had occurred some five or six months earlier; but they were not yet in actual being,

that is, "organized", and when they would be was speculative. The "highest court of the State in which a decision could be had" had acted; appellants could come only here, as they did. Appointments to the new state courts were to be accelerated; but no retroactive rights to appeal to them as to cases earlier disposed of had been provided.

Appellee speaks[4] of this Court's jurisdiction in technical words pertaining to title; he asks had this Court, upon the appeal, "acquired an 'indefeasible' jurisdiction?" (Reply, p. 11). But where Congress has provided for appeal to this Court from the judgments of the highest court of a state in which decision could be had and the appeal has been taken, may the state in turn defeat that jurisdiction by providing further possible reviews? Apparently that is what respondent would have this Court believe the state attempted. This is claimed on the basis of the fact that after the three justices were appointed and sworn (the last, we are informed, on September 1, 1959), Rules of the Court were provided (September 25) and became effective October 5, 1959, authorizing appeals permitted by 50 Sess. L. Alaska 1959, § 31(4) as amended (that is, appeals which were to go to the Ninth Circuit), reviewed above. For the first time, in the October 5 Rules, a retroactive appeal was provided, to be taken if notice were filed within a time which commenced to run with the effective date of the rules instead of the effective date of the judgment.[5]

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[4] Brf. Appellee in Reply to Brfs. Opposing Motion to Affirm or Dismiss, p. 11.

[5] Rule 54(b), Rules of the Supreme Court of Alaska, Appendix p. 22. Since the Governor of the State was a party, under Rule 7(a), time for filing an appeal thus ran for 60 days from October

As to this case, no appeal to the Alaska Supreme Court was or might be authorized either at the time the appeal to this Court was noted or at the time the rules of the Alaska Supreme Court became effective. For the very statute relied upon as providing for it, 50 Sess. L. Alaska 1959, as amended by 151 Sess. L. Alaska 1959, provides (§ 31(2)) that "nothing in this Act shall diminish or deprive the . . . Supreme Court of the United States of jurisdiction as provided by Public Law 508, 85th Congress, and other laws applicable thereto." This gives recognition to the principle which would be applied even in the absence of such a provision; for as Chief Justice Marshall stated in *Mullen* v. *Torrance,* 9 Wheat. 537, 539 (1824)—

> "It is quite clear, that the jurisdiction of the Court depends upon the state of things at the time of the action brought, and that after vesting, it cannot be ousted by subsequent events."

Morgan v. *Morgan* (1817), 2 Wheat. 290, 297 (Marshall, C. J.); *Clarke* v. *Mathewson* (1838), 12 Pet. 164, 171 (Story, J.). See also *Smith* v. *Sperling,* 354 U.S. 91, 93 and n. 1 (1957).

The Transitional Court Was a State Court.—Appellee, in his reply to our brief on the motion to affirm or dismiss, raised the question whether the transitional court from which the appeal was taken was a state court at all, or whether it was a United States district court. (Reply Brf. pp. 8-9.) If it were the latter, then under

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5, 1959, or until December 4, 1959. Out of abundance of caution, these appellants (upon receipt December 1, 1959, of appellee's reply brief on the motion to dismiss, where the point was first made) mailed a notice of appeal to the newly-established court. Proceedings in the Alaska Supreme Court have been held to await the outcome here.

§ 2281 of the Judicial Code the application for injunction would have to be heard and determined by a three-judge court. After raising the question, respondent announced (pp. 12-13) his doubt that the court was acting as a federal district court, and acknowledged that all parties consented that it was acting as a state court.

When the state was admitted to the Union on January 3, 1959, there came to an end the authority which the United States had theretofore held under Art. IV, § 3, ¶ 2 of the Federal Constitution "to make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States," and under which it could provide a district court of the territory with "general jurisdiction in civil, criminal, equity and admiralty causes" (48 U.S.C. § 101). The territorial court continued as an interim or transitional court, and continued to exercise—as it did in this case—the general jurisdiction of a state court. But it did so by authority of the State of Alaska; and very specific authority to do so was contained in the Constitution of Alaska, Art. XV, §§ 2 and 17. As to state causes of action, the court had become the agency of the state, and to no extent whatever constituted the organization of the new United States District Court for the District of Alaska, which had been authorized in the Statehood Act, § 12. That court was not to be organized for another year.

The case thus follows a formula arrived at under our constitutional system not without some pangs; but as a result of the history of the formula, neither can it leave a doubt. The early cases concerned the admission of Florida in 1845. *Benner* v. *Porter,* 9 How. 235, 242-243 (1850) held that plainly the people of the

new state could, as they had, avoid an interregnum by providing in their constitution for adopting the machinery of the territorial government for the time being and until superseded by the agency and authority of the constitution itself. But this Court left no doubt that the old territorial government was, upon admission of the new state, "displaced, abrogated, every part of it", so that the only remaining power was derived from state authority. Thus, an indictment under federal law by the transitional court was improper, Congress having made no provision for it. *Forsyth* v. *United States* (1850), 9 How. 571, 574-577. The Supreme Court of Florida agreed, and plainly held (*Beatty* v. *Ross* [1847], 1 Fla. 198, 207), that what the transitional courts did "they did as State Judges for several months after our admission." See also *Inerarity* v. *Curtis,* 4 Fla. 175, 179 (1851).

Difficulty thereafter was encountered when Wisconsin was admitted in 1848. A case pending in this Court on writ of error to the territorial supreme court failed; for while Congress and the state had provided for transfer from the old district court of the territory to the new United States District Court of cases within the federal jurisdiction, no provision was made for cases within the state jurisdiction as was the one pending here. *McNulty* v. *Batty,* 10 How. 72, 78-79 (1850). And when a similar situation occurred upon the admission of Nevada, a later act of Congress providing for remand to a state or federal court as the nature of the appeal may require was applied, though the Court noted it required consent both of the state and the federal government to transform cases into the new jurisdiction. *Freeborn* v. *Smith,* 2 Wall. 160, 174-176 (1864).

At length, Congress adopted general legislation governing the disposition of cases in the territorial courts upon statehood, whereby those of a state-court character would go to the courts of the state, those of a federal-court character to the new state United States courts. This legislation was applied as to Nebraska in *Express Co.* v. *Kountze,* 8 Wall. 342, 350 (1869), and *Baker* v. *Morton,* 12 Wall. 150, 153 (1870). Thereafter the situation was provided for in the admission acts—as to the Dakotas, see *Koenigsberger* v. *Richmond Silv. Min. Co.,* 158 U.S. 41, 48 (1895); Oklahoma, *Southern Sur. Co.* v. *Oklahoma,* 241 U.S. 582, 584-586 (1916). But as to the status of the transitional courts under this scheme, it has not been more neatly stated than in a circuit-court case relating to the admission of Colorado, *Ames* v. *Colorado Cent. R. Co.,* 1 Fed. Cas. p. 750, No. 324 (1876):

> "The territorial courts cease, on the admission of the state, to be courts of the territory, for the territorial government is displaced and abrogated; but, by adoption on the part of the state, with the consent of Congress, these courts become the provisional and temporary courts of the state."

The fact that the transitional court here was invested with federal-court functions pending organization of the new United States District Court for Alaska does not make it a court of the United States; for under the Supremacy Clause state courts are required to honor and accept cases based on federal right, even partaking of the nature of a penalty, if Congress so provides. *Testa* v. *Katt,* 330 U.S. 386, 389-394 (1947); *Claflin* v. *Houseman,* 93 U.S. 130, 136 (1876).

The court below put plainly in the record (R. 55-56) that under state law the court enjoyed a dual per-

sonality; that there was no question at that time but what he was acting as a state court; and that *qua* state court he was bound to consider and protect any assertion of federal right, so that it was unnecessary for him to exercise any federal-district-court jurisdiction over cases arising under the Constitution.

Section 4 of the Statehood Act Shows That the Case Is Not Moot.—Appellee's motion to dismiss or affirm pins the case for this Court's loss of jurisdiction on mootness. Says the state, appellants are here trying to keep us from regulating fishing because the Secretary of the Interior permitted them to fish in a certain way. While the Secretary had authority, for a transitional period, to make this authorization under § 6(e) of the Statehood Act, the Secretary's authority has expired as a result of a proviso (the state calls it the "Westland proviso") in § 6(e) that when the Secretary certified that the Alaska Legislature had made adequate provision for the administration, management, and conservation of the fisheries in the broad national interest, then, within a specified time, the state should take over the regulation of hunting and fishing. The state actually did take over January 1, 1960, following the Secretary's certification April 27, 1959 (Exec. Communication No. 903, 86th Cong., 1st Sess., Cong. Rec. April 28, 1960, 105 Cong. Rec. pp. 6247, 6169.)

But the state did not get jurisdiction to regulate fishing by appellant Indians under § 6(e) and the Secretary's certification to Congress; it could not. Section 4 of the Statehood Act forbade it. Act of July 7, 1958, 72 Stat. 339, Appendix p. 5. Section 4, quoted here to reflect an amendment (resulting in striking the material we bracket and inserting the

italicized matter) by the Alaska Omnibus Act of June 25, 1959, 73 Stat. 141, § 2, provides—

> "SEC. 4. As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property [, belonging to the United States or which may belong to] *(including fishing rights), the right or title to which may be held by said natives or is held by the United States in trust for* said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation; . . ."

The state itself has repeatedly disclaimed the jurisdiction; and it is baffling to understand how the state can still assert the right to close up appellants' traps, unless it be that the equal-footing doctrine (which we deal with on the merits) entitles them to disregard their repeated undertakings and to abandon their "solemn" compact with the people of the United States. For if one thing be plain, it is that this jurisdiction has been abjured.

Alaska disclaimed in the Constitution, Art. XII, §§ 12 and 13, adopted by the vote of the people of

Alaska April 24, 1956.[6] What was disclaimed was not immediately, in the same document, reclaimed by Art. XV, § 24, and Ordinance No. 3 (a part of the Constitution, we may assume, by reference) prohibiting fish traps; for the ordinance does not purport to go beyond the jurisdiction which might abide in the state, as might be the case if it referred specifically to Indians, and so may not be read as applying to Indian fishing rights. Anyway, Art. XII, § 13, automatically conformed the new constitution to the act of admission.

But Alaska's disavowal of jurisdiction does not stop here. When the Statehood Act provided in § 4 for this solemn compact and this exclusive jurisdiction, Congress was careful to provide that the people of the state should themselves be given an opportunity to conform to this reservation of jurisdiction by the United States. Section 8(b) of the Statehood Act specifically provided for a vote of the people of Alaska on the proposition whether the provisions of the Statehood Act "reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein

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[6] Constitution of Alaska, Art. XII, Sec. 12—

". . . The State and its people further disclaim all right or title in or to any property, including fishing rights, the right or title to which may be held by or for any Indian, Eskimo, or Aleut, or community thereof, as that right or title is defined in the act of admission. The State and its people agree that, unless otherwise provided by Congress, the property, as described in this section, shall remain subject to the absolute disposition of the United States. . . .

"Sec. 13. All provisions of the act admitting Alaska to the Union which reserve rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property, are consented to fully by the State and its people."

made to the State of Alaska, are consented to fully by said State and its people." If not "fully consented to", the Statehood Act was ineffective. If consented to, "the proposed constitution of the proposed State of Alaska, ratified by the people at the election held on April 24, 1956, shall be deemed amended accordingly." § 8(b). As the proclamation admitting the state shows (Appendix, p. 29) the people of Alaska again by their vote agreed to this exclusive federal jurisdiction; and if Ordinance No. 3 had been a part of the Constitution of Alaska and otherwise might have applied to these appellants, that constitution was amended to make it inapplicable.

Nor does the plain understanding as well as undertaking of the state stop even there: when the State sought an amendment of § 4 of the Statehood Act in the "Alaska Omnibus Act" it neither asserted that it had acquired jurisdiction over Indian fishing nor sought to have it transferred. Again, the retention of exclusive jurisdiction in the federal government was expressly provided. And the very Alaska statute asserted by appellee as authority to close up Indian fish traps again carries the specific waiver. Chap. 95 Stat. L. Alaska 1959, App. p. 26.

As a result, the controversy here is not moot; in the face of § 4, the transfer of fish-and-game department duties from the Secretary of the Interior to the state under § 6(e) did not to any extent grant the state a jurisdiction which it had abjured. Yet Alaska still asserts its jurisdiction to regulate the fishing of these Indians. Were it clearly to recant in this Court, then we might have a problem of mootness. But as it is, the state's argument is no more than to say that because the Secretary has lost his temporary-Alaska-fish-and-

game-department duties respecting all other fishing in Alaska's jurisdiction, it must follow that in some way he has invested the State with jurisdiction over Indian fishing in defiance of § 4 of the Statehood Act, that the state has taken that jurisdiction in defiance of its solemn compact, and that the very controversy which the state has made in taking this position is thereby mooted in the state's favor.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES ETC.

The following are quoted in our separate appendix:

Treaty with Russia, Mar. 30, 1867, 15 Stat. 539, 542, Art. III.—App. 1-2.

Alaska Civil Government Act of May 17, 1884, 23 Stat. 24, 26, § 8, proviso.—App. 2-3.

R.S. § 1839, from Revised Statutes, Provisions Common to All the Territories, 1874.—App. 2.

Acts of May 17, 1884, § 3, 23 Stat. 24, and June 6, 1900, § 4, 31 Stat. 321, 322, as amended, to Provide a Civil Government for Alaska, from 48 U.S.C. as follows: 48 U.S.C. §§ 101, 112.—App. 3.

Judicial Code, 28 U.S.C., §§ 1291, 1294, as it read prior to Alaska Statehood Act.—App. 4.

Alaska Statehood Act of July 7, 1958, 72 Stat. 339, Pub. L. 85-508, §§ 1, 4, 6(e), 7, 8(a), (b), (c) and (d), 12, 13, 14, 15, 16, 17, 18.—App. 4-14.

Alaska Omnibus Act of June 25, 1959, 73 Stat. 141, Pub. L. 86-70, § 2(a), (b).—App. 14-15.

White Act of June 6, 1924, 43 Stat. 464, as amended, from 48 U.S.C. §§ 221, 222, 226, 227, 228.—App. 15-17.

Constitution of Alaska as ratified by electorate of Alaska April 24, 1956, and effective under the Statehood Act on January 3, 1959: Art. IV, Secs. 1, 2, 3; Art. VIII, Sec. 15; Art. XII, Secs. 12, 13; Art. XV, Secs, 2, 4, 17, 24, 25; Ordinance No. 3.—App. 17-21.

Rules of the Supreme Court of Alaska, Rules 7(a), 53, 54(a), (b), (c), and (d), adopted September 25, effective October 5, 1959.—App. 21-22.

Session Laws of Alaska 1959, Chap. 17, Chap. 50, Secs. 31, 32(3) and (4); Chap. 95; Chap. 151.—App. 22-28.

Proclamations of the President: Jan. 3, 1959, admitting Alaska, 24 F.R. 81; U.S. Dist. Ct. Alaska prepared to assume functions, District Court of Alaska terminated, Feb. 20, 1960, 25 F.R. 1584.—App. 29-31.

Press Release, Secty. Interior Seaton, April 7, 1960, and proposed regulations to govern Indian Fishing in Alaska, Fed. Register April 9, 1960, 25 F.R. 3079.—App. 32-38.

Statement of Fish and Wildlife Service of all fish traps, Indian and non-Indian, operated in Alaska for last five years, dated April 13, 1960.—App. 39.

QUESTIONS PRESENTED

1. Is the reservation to the United States in the Alaska Statehood Act, § 4, of the property (including fishing rights) of Indians, together with exclusive jurisdiction over them, unconstitutional as violative of the equal-footing doctrine?

2. Do Alaska statutes, to the extent they regulate fishing by Indians with the use of traps, conflict with the express reservation to the United States of exclu-

sive jurisdiction over property (including fishing rights) of Indians pursuant to § 4 of the Statehood Act?

STATEMENT OF THE CASE

The complaints (S.R. 82, 102) assert the following facts on the basis of which the motion to dismiss was sustained:

Appellants, Village of Kake and Angoon Community Association, are each an Indian corporation chartered pursuant to the Indian Reorganization Act of 1934 [48 Stat. 984, 988, as amended 49 Stat. 1250, § 17; 25 U.S.C. § 477]; and each has as its membership an entire village of Thlinget Indians. The village of Kake is located at Kake, Alaska,[7] and that of Angoon is located at Angoon, Alaska.[8] S.R. 82-83, 102.

Each appellant operates fish traps, boats, canneries and related equipment which was purchased by the United States in trust for appellants as beneficial owners (S.R. 83, 102-103), although each appellant owes a sizeable debt to the United States arising out of the acquisition and operation of this equipment (S.R. 88, 108). The United States furnishes the funds for operating this equipment (S.R. 84, 103), the operation of which, at the present time and historically, is the only employment available to the members and constitutes the sole source of income for the calendar year for almost all of the members (S.R. 89, 108).

Operation of the traps is essential to the operation of the canneries; appellants do not have available to

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[7] Kake is located on the northwest side of Kupreanof Island approxmately 100 miles southwest of Juneau.

[8] Angoon is located on the southwest side of Admiralty Island, approximately 60 miles southwest of Juneau.

them an alternative method of maintaining their operations. ' Closing the canneries would wipe out the economic base of the members, leaving the villages with no means of self-support, the resulting damage extending to the very fiber of their social, economic and cultural wellbeing. S.R. 88-89; 108.

Although the regulations (24 F.R. 2053) of the Secretary of the Interior of March 7, 1959, prohibited fish traps generally, the prohibition was not applied to native fish traps and some traps of each of the appellants were designated for operation. S.R. 84-85, 104. The Secretary of the Interior based this distinction in treatment of Indian and non-Indian traps on the disclaimer of Indian fishing rights made by the State of Alaska, and on the long-standing supervisory control exercised by the United States for the protection of the Indians. S.R. 85, 104-105.[9]

Notwithstanding appellants were thus authorized to operate, appellee (Governor Egan) both personally and by his agents threatened appellants with seizure of their traps and criminal prosecution of the persons installing and maintaining them, and, on June 15, 1959, actually seized a trap which Kake had set out and arrested the President of Kake's Council and the foreman of the crew which set the trap. S.R. 86, 105-106.

The complaints charged, among other things, that sec. 4 of the Statehood Act and Art. XII, Sec. 12, of the Constitution of Alaska prevented the state from interfering with the control and management of Indian

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[9] See letter to Alaska Area Director set out at length at S.R. 131-132. The disclaimer of Alaska cited by the Secretary of the Interior is Sec. 4 of the Statehood Act, quoted in our Appendix p. 5.

fishing rights held by the Indians or the United States as trustee on their behalf; that the regulations allowing appellants to operate constituted an exercise by the United States of its exclusive powers over the fishing rights of Indians; that the regulation of Indians was exclusively in the United States; and that the state statutes (Constitutional Ordinance No. 3 and Chap. 17, Sess. L. Alaska 1959) were repugnant to the statutes and Constitution of the United States and of Alaska. S.R. 87-88; 106-107. A preliminary and a permanent injunction were prayed. S.R. 91-92; 110-111.

To these complaints appellee immediately moved to dismiss (S.R. 120, 122), asserting exclusive state jurisdiction over the lands and waters involved, that the state has authority to prohibit fish traps for commercial fishing; that the Constitution of Alaska has amended the White Act (of 1924), 48 U.S.C. §221 et seq. (App. 15-17); that the federal regulations (of March 7, 1959) are invalid; that the regulation permits a discrimination not permitted under the White Act and conflicts with the Constitution of Alaska, and that plaintiffs have no property right in a fish-trap location.

The court refused a restraining order prohibiting interference with the traps, but set over for a few days the matter of whether a temporary injunction should issue. S.R. 129-130. When the hearing continued, the court called attention to its status as an interim court (R. 55), stating that "Whatever might be said in reference to the Federal end of it, there certainly seems to be no question at this time but what we are acting as a State Court." He noted that a state court must recognize and protect matters of federal right, and

that recourse need not be had to a federal court. R. 56. Three days later, July 2, 1959, he filed an opinion on the merits, dismissing the complaints. He recognized the outright collision between federal and state power (R. 60), held that the state owns the tidelands (where the traps were to be installed), as a result of the equal-footing doctrine; that "Indian fishing rights do not include the right to fish with forbidden gear or in a manner prohibited to other citizens of the state" (R. 62); that the equal-footing doctrine means that the state has acquired not only the tidelands but "local sovereignty" as well (R. 62); that "The state has an absolute right to control and regulate the killing of game as its judgment deems best in the interest of its people" (R. 64).

Accordingly, the court sustained the validity and application of Constitutional Ordinance No. 3 (App. 20.), which abolished the use of fish traps (R. 65), holding that for the Secretary of the Interior to permit the use of fish traps "would seem to impair the equal footing standing of the new state." R. 65. The court concluded that not only was the Secretary without authority but "that the State of Alaska has authority to prohibit all fish traps in Alaskan waters, including those of the plaintiffs, and the plaintiffs are not entitled to the relief here sought." R. 66.

While not reflected by the printed record, new regulations for the coming season governing the operation of appellants' fish traps have been proposed by the Secretary of the Interior, and are quoted in our Appendix, pp. 34-38. The Secretary again concludes that the fishing rights of appellants were preserved for them by Section 4 of the Statehood Act (App. 32-34.); and

to his administrative interpretation of the Statehood Act there is added that of the Department of Justice (App. 32).

ARGUMENT

It appears it were easy to have avoided any constitutional issue in these cases at all. At least to the non-Alaskan, the law of Alaska seems plain beyond cavil; under that law itself the wrongful exercise of state authority appears plain, and the state law itself seems beyond doubt to say the state has no jurisdiction. For Alaska has repeatedly disclaimed the jurisdiction here sought to be exercised; it has entered into a compact with the United States not to exercise it, and that has been ratified by vote of the people of Alaska themselves;[10] its State Constitution had expressly abjured both property in the fishing rights of Indians and

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[10] To the extent here relevant, Sec. 4 of the Statehood Act, (App. 5), as amended (App. 15) provides as a condition of admission for a compact of Alaska and its people with the United States whereby "they forever disclaim all right and title to any lands or other property . . . which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property (including fishing rights), the right or title to which may be held by said natives or is held by the United States in trust for said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority . . ."

Sec. 8(b) of the same act (App. 8) provided for a vote by the people of the state whether the reservation of rights or powers to the United States were consented to by the State and its people. The election was held April 24, 1956, and the proposition agreed to. App. 29.

power to dispose of those rights,[11] and in its statutes implementing the closing of fish traps it specifically excepts Indian fish traps.[12]

Yet the highest court of the state for the time being, the transitional court, said here that the jurisdiction of Alaska actually does extend to this Indian fishing. It held (R. 64, 65) that Ordinance No. 3 of the Constitution applied, and (R. 66) that the Secretary of the Interior is without authority to regulate the Indians' fish traps but that the State of Alaska has authority to prohibit all fish traps in Alaskan waters including those of the Indians.

We assume that in accordance with the usual rule this Court will regard itself as bound by this construction by the state court and by appellee Governor as representing the state administrative officials concerned.[13] Hence we go to the two resulting questions: (1) Is the reservation of exclusive jurisdiction by the federal government in § 4 of the Statehood Act violative, as the court below held (R. 65), of the equal-footing doctrine of the federal Constitution or law? (2) Are the Alaska constitutional or statutory prohibitions of Indian fishing violative of § 4 of the State-

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[11] Const. Alaska, Art. XII, Sec. 12, (App. 18-19); *cf. id.*, Sec. 13, in conjunction with Sec. 4 of the Statehood Act, just above. Constitutional Ordinance No. 3, (App. 20), does not water down the disclaimer, since it does not expressly refer to Indian rights, and, if a part of the Constitution, and even if it did refer to Indian fishing rights, the Constitution stood amended pursuant to Sec. 8(b) of the Statehood Act and the plebiscite.

[12] Chap. 95, Sess. L. Alaska 1959, (App. 26).

[13] Aero Mayflower Trans. Co. v. Board of R.R. Commrs., 332 U.S. 495, 499-500 (1947); Supreme Lodge Knights of Pythias v. Meyer, 265 U.S. 30, 32-33 (1924).

hood Act, hence invalid under the Supremacy Clause of the federal Constitution? The answer to each is simple:

1. Sec. 4 of the Statehood Act Is Not Violative of the Equal-Footing Doctrine

In the last analysis, the state's case for invalidity of Sec. 4 of the Statehood Act will have to depend upon *Ward* v. *Race Horse,* 163 U.S. 504 (1896) (cited below, R. 62), *Coyle* v. *Smith,* 221 U.S. 559 (1911), and the tidelands cases commencing with *Pollard* v. *Hagan,* 3 How. 212 (1845). The court below appears to have placed its main reliance on the tidelands cases, since they involve property inuring to the state as a result of its admission on an equal footing with existing states.

In its gross aspects, *Ward* v. *Race Horse* was aberrant; it held that as a result of its admission as a state Wyoming could punish an Indian for violating a state game statute in killing seven elk off his reservation in reliance on a claimed treaty right to hunt on "unoccupied lands of the United States". Prior to *Ward* v. *Race Horse,* the reservation of lands to which Indians had had original title had been respected (*Gaines* v. *Nicholson,* 9 How. 356, 365 [1850]; and following *Ward* v. *Race Horse* the Court immediately returned to that earlier doctrine in *United States* v. *Winans,* 198 U.S. 371, 380-381 (1905), which held that though the white man felt he could make better use of the fishing right than the Indian[14], the United States could create rights while it held the territory which would be binding upon the state after admission, and that the rights conferred upon the Indians are not subordinate to the

[14] "It needs no argument to show that the superiority of a combined harvester over the ancient sickle neither increased nor decreased rights to the use of land held in common." P. 382.

powers acquired by the state upon its admission into the Union upon an equal footing. This view has been consistently followed by this Court since, including further cases of state interference with Indian fishing. *Seufert Bros. Co.* v. *United States,* 249 U.S. 194, 198-9 (1919); *Tulee* v. *Washington,* 315 U.S. 681, 684-5 (1942). Exclusions of state jurisdiction over Indians by admission acts have uniformly been sustained as well in other situations against contentions based on the equal-footing doctrine. *Dick* v. *United States,* 208 U.S. 340, 353 (1908); *Ex parte Webb,* 225 U.S. 663, 682, 690 (1912); *United States* v. *Sandoval,* 231 U.S. 28, 38, 45-46, 49 (1913).[15] For the equal footing doctrine is of no greater dignity than the Congressional power to regulate commerce with the Indian tribes. *Dick* v. *United States,* 208 U.S. at p. 353. In 1954 this Court declined an opportunity to review an opinion of the Supreme Court of Idaho commenting instructively on the deviation in *Ward* v. *Race Horse. State* v. *Arthur,* cert. den. No. 552, O.T. 1953, 347 U.S. 937, denying review of 74 Ida. 251, 261 P. 2d 135, 138-139 (1953).

At the same time, *Ward* v. *Race Horse* is distinguishable on its face. This Court specifically noted (163 U.S. at p. 506) that Wyoming was admitted on an equal footing with the original states in all respects whatever "but in this act there was no exception, as there had been in the territorial act, in favor of the Indians." The lack of reservation of rights of and jurisdiction over Indians was emphasized and reem-

[15] Counsel who had convinced the Court in *Ward* v. *Race Horse* by this time had ascended this Bench and wrote the opinion in the *Sandoval* case, leaving no doubt as to the power of the United States, the distinction of *Coyle* v. *Oklahoma,* or the fact that such an exclusion in an admission act (New Mexico) did not offend equality with the other states.

phasized by the Court. p. 515. The distinction from the present case, with its express reservation of rights and jurisdiction, is plain.

Coyle v. *Smith,* 221 U.S. 559 (1911), is the most spectacular of the equal-footing cases. The act of admission of Oklahoma (and other states) of 1906 provided that the capital of Oklahoma should be located at Guthrie and should not be removed from Guthrie prior to 1913. The act was accepted by Oklahoma as irrevocable. Despite this undertaking, by act of 1910 Oklahoma changed the capital to Oklahoma City. This Court held that locating the capital or expending moneys for the capital were "essentially and peculiarly state business." It held the provision in the act of admission to be unconstitutional for failure to place the the state on a plane of equality with its sister states.

But *Coyle* v. *Smith* will not help appellee in this situation. Not only do we have the many cases sustaining an exception of right and jurisdiction regarding Indians, which we have just reviewed, including the specific distinction in the *Sandoval* case (above, n. 15), but *Coyle* v. *Smith* itself recognized and distinguished the situation in which the condition in the enabling act relates, as here, to matters of federal—not exclusively state—power. p. 570.

That leaves the tidelands cases as the last prop. *Pollard* v. *Hagan,* 3 How. 212 (1845), was particularly relied on by the court below (R. 62). That case was reaffirmed in *Goodtitle ex. dem. Pollard* v. *Kibbe,* 9 How. 471, 478 (1850), and *Doe ex dem. Hallett & Waller* v. *Beebe,* 13 How. 25, 26 (1851). But there again, the case deals with the broad language of agreement under which the state was admitted. 3 How. at p. 223—

> "When Alabama was admitted into the union, on an equal footing with the original states, she succeeded to all the rights of sovereignty, jurisdiction, and eminent domain which Georgia possessed at the date of the cession, *except so far as this right was diminished by the public lands remaining in the possession and under the control of the United States,* for the temporary purposes provided for in the deed of cession and the legislative acts connected with it. *Nothing remained in the United States, according to the terms of the agreement, but the public lands.* And, if an express stipulation had been inserted in the agreement, granting the municipal right of sovereignty and eminent domain in the United States, such stipulation would have been void and inoperative; because the United States have no constitutional capacity to exercise municipal jurisdiction, sovereignty, or eminent domain, within the limits of a state or elsewhere, except in the cases in which it is expressly granted." (Italics added.)

Yet here we have the express reservation of rights and jurisdiction in the United States where jurisdiction is independently sustained under the federal Constitution against this very contention. *United States* v. *Sandoval,* 231 U.S. 28, 38, and cases cited. See also *Ex Parte Webb,* 225 U.S. 663, 669-670. In addition to tidelands, the doctrine of the tidelands cases covers beds of lakes and navigable waterways. Yet, the reservation of Indian fishing rights and jurisdiction has been honored as to each. See *Seufort Bros.* v. *United States,* 249 U.S. 194, 198-199 (1919); *Tulee* v. *Washington,* 315 U.S. 681, 684-685 (1942). Thus the tidelands cases do not support to any extent the unconstitutionality of § 4 of the Statehood Act.

2. To the Extent the Alaska Constitution and Statutes Regulate Indian Fishing They Violate Sec. 4 of the Statehood Act

Section 4 of the Statehood Act (App. 5-6) states the terms of a compact between Alaska and the United States whereby Alaska "forever" disclaims not only all rights or title to lands or other property, including fishing rights, held by any Indians or by the United States in trust for them, but also agrees that it "shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority" (with two exceptions immaterial here).

It is perhaps unnecessary to refer to the precise quantum or quality of the property held by or in trust for the Indians; that is regulated by federal law, and no matter what it is, until the federal government gives leave, under § 4, the State of Alaska is absolutely without any jurisdiction to define or limit those rights. At the same time, we do not doubt that Alaska has the same privilege as anyone else to urge its desires on the federal officials charged with regulating Indians. See the recent proposed regulations, and the solicitation of views by the Secretary of the Interior. 25 F.R. 3079, App. 34, 35.

Briefly, however, we should note that jurisdiction over the "uncivilized tribes" was expressly accepted by the United States in the Treaty with Russia of 1867, Art. III (App. 1-2). Since then, the legal position of Indians in Alaska is the same in relation to the federal government as Indians elsewhere. *Cohen,* HANDBOOK ON FEDERAL INDIAN LAW (1942), p. 40; FEDERAL INDIAN LAW (1958), p. 934, and authorities cited. As a result, broad legislative power to protect these Indians lies within the authority of Congress. *United States* v. *Sandoval,* 231 U.S. 28, 45-46 (1913); *United States*

v. *Kagama,* 118 U.S. 375, 383-384 (1886). The basis in the Constitution for this power has been variously ascribed to the commerce clause, the spending power, regulation of the national domain, the treaty-making power, conditions on the admission of new states, the war power, and others.[16] The need for power co-extensive with the extension of United States sovereignty to new areas westward, to deal with and to protect the aborigines who were there first, was obvious. As this Court observed, "Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies." *United States* v. *Kagama,* 118 U.S. 375, 384 (1886). The usual contempt of the alien pioneer for the rights, status and culture of the aborigine was not shared by the people of the United States as a whole; since the Northwest Ordinance they had provided by law for respect of the Indian title.[17]

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[16] Cohen, *Handbook of Federal Indian Law* (G.P.O., 1942), Ch. 5, pp. 89 and following.

[17] The same need for that protection today, as to these appellants, can be heard even through the words of the cold record. The court below acknowledges that "There has long been growing opposition to fish traps in Alaska, and plebicites held in the Territory in connection therewith have resulted overwhelmingly in votes for the abolishment of traps", that "The salmon runs in Alaska are being rapidly depleted", etc., R. 60-61. Yet note that Indian use of fish traps could not have caused the depletion; for (for instance) in 1956, Indian traps were only nine. (App. A to Brf. Appellants No. 326, p. 49) whereas the total traps were 247—a ratio of about 29 to 1 (App. this brief, p. 39). As the Alaska District Court said in United States v. Libby, McNeil & Libby (1952), 107 F. Supp. 697, 699, "it is no exaggeration to say that nothing since the purchase of Alaska has engendered so much ill-feeling and resentment as the Department's reservation policy and its encouragement of aboriginal claims, especially in the face of Miller v. United States, 9 Cir., 159 F. 2d 997, holding that aboriginal title was extinguished by the Treaty of Cession."

United States as Guardian &c v. *Santa Fe Pac. R.R. Co.*, 314 U.S. 339, 345-350 (1941). Cf. *Tlingit and Haida Inds. of Alaska* v. *United States*, 177 F. Supp. 452, 463-464 (C. Cls., 1959). While this Court in *Tee-Hit-Ton Indians* v. *United States*, 348 U.S. 272 (1955), found that the bare, unrecognized aboriginal title of the Tlingit Indians did not entitle them to compensation from the United States for its deprivation, still this Court indicated that the problem of extent of Indian title was one for Congress. pp. 277-279).

Whatever may be the right of appellants to recover from the United States for a taking of their aboriginal rights, there can be no question that since not later than the Revised Statutes of 1874, § 1839 (App. 2), Congress has provided against impairing the rights of person or property of the Indians so long as they remained unextinguished by treaty; and a special provision in the act providing a civil government for Alaska provided they should not be disturbed in their possession of any lands in their use or occupation. Act of May 17, 1884, § 8, 23 Stat. 24, 26 (App. 2-3).

That policy continues without interruption to the present. It was expressly provided by Sec. 4 of the Statehood Act, which under the Supremacy Clause is the supreme law of the land. Cf. *Irvine* v. *Marshall*, 20 How. 558, 562-563 (1857). That it may be sustained against hostile state enactments as a compact or contract entitled to protection under the contract-impairments clause is also indicated. *Green* v. *Biddle*, 8 Wheat. 1, 92-93 (1823); *The Kansas Indians*, 5 Wall. 737, 751, *et seq.* (1866), as reviewed in *Coyle* v. *Smith*, 221 U.S. at pp. 578-579.

CONCLUSION

The judgment should be reversed and, pursuant to § 14 of the Statehood Act[18] (App. 12) and Art. XV, Sec. 17, of the Alaska Constitution (App. 20) the case should be remanded to the Supreme Court of Alaska.

Respectfully submitted,

JOHN W. CRAGUN,
Counsel for Appellants in No. 327.

FRANCES L. HORN,
WILKINSON, CRAGUN & BARKER,
Of Counsel.

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[18] Sec. 13 of the Statehood Act provides against abatement of pending actions and causes whereon a right has accrued but no proceeding commenced. Sec. 14 provides for appeals already taken to this Court or to the Ninth Circuit; and where final judgment has been rendered in the district court and appeals might be had except for the admission of the state, for appeal notwithstanding admission, to this Court or the Ninth Circuit under the provisions of then-existing law, and adds—"and in either case, the Supreme Court of the United States . . . in the event of reversal, shall remand the said cause to either the State supreme court or other final appellate court of said State, or the United States district court for said district, as the case may require . . ." The remand need not be rested on that section, since the same result would follow from the fact that Alaska has made its Supreme Court the successor of the court below. Const. Alaska, Art. XV, § 17, App. 20.

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FILED
APR 20 1960
JAMES R. BROWNING, Cl

IN THE

Supreme Court of the United States

OCTOBER TERM [redacted] 1961

No. 326 & 2

METLAKATLA INDIAN COMMUNITY, ANNETTE ISLAND RESERVE,
Appellant,

vs.

EGAN, GOVERNOR OF ALASKA, et al.

No. 327 & 3

ORGANIZED VILLAGE OF KAKE, et al., *Appellants,*

vs.

EGAN, GOVERNOR OF ALASKA

On Appeal from the District Court for the District of Alaska

APPENDIX TO BRIEF FOR APPELLANTS IN NO. 327

JOHN W. CRAGUN,
1616 H St., N. W.,
Washington 6, D. C.

Counsel for Appellants in No. 327.

FRANCES L. HORN,
WILKINSON, CRAGUN & BARKER,
Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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STATUTES, ETC., INVOLVED

Treaty With Russia

March 30, 1867. 15 Stat. 539, 542

* * * * * * * * * *

ARTICLE III.

The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country.

* * * * * * * * * *

FEDERAL STATUTES INVOLVED:

Revised Statutes. Provisions Common to All the Territories. 1874

* * * * * * * * * *

SEC. 1839. Nothing in this Title shall be construed to impair the rights of person or property pertaining to the Indians in any Territory, so long as such rights remain unextinguished by treaty between the United States and such Indians, or to include any Territory which, by treaty with any Indian tribe, is not, without the consent of such tribe, embraced within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of any Territory now or hereafter organized until such tribe signifies its assent to the President to be embraced within a particular Territory.

* * * * * * * * * *

Alaska Civil Government Act

May 17, 1844. 23 Stat. 24, 26, Sec. 8

* * * * * * * * * *

Provided, That the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress: * * *

* * * * * * * * * * *

TITLE 48 UNITED STATES CODE

(The two sections which next follow embody the language establishing the District Court of Alaska from the Act of May 17, 1884, sec. 3, 23 Stat. 24, as restated in the Act of June 6, 1900, sec. 4, 31 Stat. 321, 322, as amended):

§ 101. District court; judges; divisions

There is established a district court for the District of Alaska, with the jurisdiction of district courts of the United States and with general jurisdiction in civil, criminal, equity, and admiralty causes; and four district judges shall be appointed for the district, each at an annual salary of $22,500, who shall during their terms of office reside in the divisions of the district to which they may be respectively assigned by the President. The court shall consist of four divisions, which shall also be recording divisions.

* * * * * * * * * * *

§ 112. Appointment of attorneys, judges and marshals

The attorneys, judges, and the marshals provided for in sections 21-24, 44, 45, 67-73, 74-90, and 145 of this title shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold their respective offices for the term of four years and until their successors are appointed and qualified, unless sooner removed by the President for cause.

* * * * * * * * * * *

Title 28, United States Code

(as it read prior to Alaska Statehood)

• • • • • • • • • • •

§ 1291. Final decisions of district courts

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

• • • • • • • • • • •

§ 1294. Circuits in which decisions reviewable

Appeals from reviewable decisions of the district and territorial courts shall be taken to the courts of appeals as follows:

(1) From a district court of the United States to the court of appeals for the circuit embracing the district;

(2) From the District for the Territory of Alaska or any division thereof, to the Court of Appeals for the Ninth Circuit;

• • • • • • • • • • •

Alaska Statehood Act

July 7, 1958. PUBLIC LAW 85-508, 72 Stat. 339

To provide for the admission of the State of Alaska into the Union

• • • That, subject to the provisions of this Act, and upon issuance of the proclamation required by section 8 (c) of this Act, the State of Alaska is hereby declared to be a

State of the United States of America, is declared admitted into the Union on an equal footing with the other States in all respects whatever, and the constitution formed pursuant to the provisions of the Act of the Territorial Legislature of Alaska entitled, "An Act to provide for the holding of a constitutional convention to prepare a constitution for the State of Alaska; to submit the constitution to the people for adoption or rejection; to prepare for the admission of Alaska as a State; to make an appropriation; and setting an effective date", approved March 19, 1955 (Chapter 46, Session Laws of Alaska, 1955), and adopted by a vote of the people of Alaska in the election held on April 24, 1956, is hereby found to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence, and is hereby accepted, ratified, and confirmed.

* * * * * * * * * *

SEC. 4. As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property, belonging to the United States or which may belong to said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation: *Provided,* That nothing contained in this

Act shall recognize, deny, enlarge, impair, or otherwise affect any claim against the United States, and any such claim shall be governed by the laws of the United States applicable thereto; and nothing in this Act is intended or shall be construed as a finding, interpretation or construction by the Congress that any law applicable thereto authorizes, establishes, recognizes, or confirms the validity or invalidity of any such claim, and the determination of the applicability or effect of any law to any such claim shall be unaffected by anything in this Act: *And provided further,* That no taxes shall be imposed by said State upon any lands or other property now owned or hereafter acquired by the United States or which, as hereinabove set forth, may belong to said natives, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation.

* * * * * * * * * *

SEC. 6.

* * * * * * * * * *

(e) All real and personal property of the United States situated in the Territory of Alaska which is specifically used for the sole purpose of conservation and protection of the fisheries and wildlife of Alaska, under the provisions of the Alaska game law of July 1, 1943 (57 Stat. 301; 48 U. S. C., secs. 192-211), as amended, and under the provisions of the Alaska commercial fisheries laws of June 26, 1906 (34 Stat. 478; 48 U. S. C., secs, 230-239 and 241-242), and June 6, 1924 (43 Stat. 465; 48 U. S. C., secs. 221-228), as supplemented and amended, shall be transferred and conveyed to the State of Alaska by the appropriate Federal agency: *Provided,* That the administration and management of the fish and wildlife resources of Alaska shall be retained by the Federal Government under existing laws until the first day of the first calendar year following the expiration of ninety legislative days after the Secretary of the Interior certifies to the Congress that the Alaska State Legislature has made adequate provision for the admin-

istration, management, and conservation of said resources in the broad national interest: *Provided*, That such transfer shall not include lands withdrawn or otherwise set apart as refuges or reservations for the protection of wildlife nor facilities utilized in connection therewith, or in connection with general research activities relating to fisheries or wildlife. Sums of money that are available for apportionment or which the Secretary of the Interior shall have apportioned, as of the date the State of Alaska shall be deemed to be admitted into the Union, for wildlife restoration in the Territory of Alaska, pursuant to section 8 (a) of the Act of September 2, 1937, as amended (16 U. S. C., sec. 669g-1), and for fish restoration and management in the Territory of Alaska, pursuant to section 12 of the Act of August 9, 1950 (16 U. S. C., sec. 777k), shall continue to be available for the period, and under the terms and conditions in effect at the time, the apportionments are made. Commencing with the year during which Alaska is admitted into the Union, the Secretary of the Treasury, at the close of each fiscal year, shall pay to the State of Alaska 70 per centum of the net proceeds, as determined by the Secretary of the Interior, derived during such fiscal year from all sales of sealskins or sea-otter skins made in accordance with the provisions of the Act of February 26, 1944 (58 Stat. 100; 16 U. S. C., secs. 631a-631q), as supplemented and amended. In arriving at the net proceeds, there shall be deducted from the receipts from all sales all costs to the United States in carrying out the provisions of the Act of February 26, 1944, as supplemented and amended, including, but not limited to, the costs of handling and dressing the skins, the costs of making the sales, and all expenses incurred in the administration of the Pribilof Islands. Nothing in this Act shall be construed as affecting the rights of the United States under the provisions of the Act of February 26, 1944, as supplemented and amended, and the Act of June 28, 1937 (50 Stat. 325), as amended (16 U. S. C., sec. 772 et seq.).

* * * * * * * * * *

SEC. 7. Upon enactment of this Act, it shall be the duty of the President of the United States, not later than July 3, 1958, to certify such fact to the Governor of Alaska. Thereupon the Governor, on or after July 3, 1958, and not later than August 1, 1958, shall issue his proclamation for the elections, as hereinafter provided, for officers of all elective offices and in the manner provided for by the constitution of the proposed State of Alaska, but the officers so elected shall in any event include two Senators and one Representative in Congress.

SEC. 8. (a) The proclamation of the Governor of Alaska required by section 7 shall provide for holding of a primary election and a general election on dates to be fixed by the Governor of Alaska: *Provided,* That the general election shall not be held later than December 1, 1958, * * *

* * * * * * * * * * *

(b) At an election designated by proclamation of the Governor of Alaska, which may be the general election held pursuant to subsection (a) of this section, or a Territorial general election, or a special election, there shall be submitted to the electors qualified to vote in said election, for adoption or rejection, by separate ballot on each, the following propositions:

"(1) Shall Alaska immediately be admitted into the Union as a State?

"(2) The boundaries of the State of Alaska shall be as prescribed in the Act of Congress approved .... (date of approval of this Act) and all claims of this State to any areas of land or sea outside the boundaries so prescribed are hereby irrevocably relinquished to the United States.

"(3) All provisions of the Act of Congress approved ..... (date of approval of this Act) reserving rights or powers to the United States, as well as those prescribing the terms or conditions of

the grants of lands or other property therein made to the State of Alaska, are consented to fully by said State and its people."

In the event each of the foregoing propositions is adopted at said election by a majority of the legal votes cast on said submission, the proposed constitution of the proposed State of Alaska, ratified by the people at the election held on April 24, 1956, shall be deemed amended accordingly. In the event any one of the foregoing propositions is not adopted at said election by a majority of the legal votes cast on said submission, the provisions of this Act shall thereupon cease to be effective.

The Governor of Alaska is hereby authorized and directed to take such action as may be necessary or appropriate to insure the submission of said propositions to the people. The return of the votes cast on said propositions shall be made by the election officers directly to the Secretary of Alaska, who shall certify the results of the submission to the Governor. The Governor shall certify the results of said submission, as so ascertained, to the President of the United States.

(c) If the Presdent shall find that the propositions set forth in the preceding subsection have been duly adopted by the people of Alaska, the President, upon certification of the returns of the election of the officers required to be elected as provided in section 7 of this Act, shall thereupon issue his proclamation announcing the results of said election as so ascertained. Upon the issuance of said proclamation by the President, the State of Alaska shall be deemed admitted into the Union as provided in section 1 of this Act.

Until the said State is so admitted into the Union, all of the officers of said Territory, including the Delegate in Congress from said Territory, shall continue to discharge the duties of their respective offices. Upon the issuance of said

proclamation by the President of the United States and the admission of the State of Alaska into the Union, the officers elected at said election, and qualified under the provisions of the constitution and laws of said State, shall proceed to exercise all the functions pertaining to their offices in or under or by authority of the government of said State, and officers not required to be elected at said initial election shall be selected or continued in office as provided by the constitution and laws of said State. The Governor of said State shall certify the election of the Senators and Representative in the manner required by law, and the said Senators and Representatives shall be entitled to be admitted to seats in Congress and to all the rights and privileges of Senators and Representatives of other States in the Congress of the United States.

(d) Upon admission of the State of Alaska into the Union as herein provided, all of the Territorial laws then in force in the Territory of Alaska shall be and continue in full force and effect throughout said State except as modified or changed by this Act, or by the constitution of the State, or as thereafter modified or changed by the legislature of the State. All of the laws of the United States shall have the same force and effect within said State as elsewhere within the United States. As used in this paragraph, the term "Territorial laws" includes (in addition to laws enacted by the Territorial Legislature of Alaska) all laws or parts thereof enacted by the Congress the validity of which is dependent solely upon the authority of the Congress to provide for the government of Alaska prior to the admission of the State of Alaska into the Union, and the term "laws of the United States" includes all laws or parts thereof enacted by the Congress that (1) apply to or within Alaska at the time of the admission of the State of Alaska into the Union, (2) are not "Territorial laws" as defined in this paragraph, and (3) are not in conflict with any other provisions of this Act.

* * * * * * * * * *

SEC. 12. Effective upon the admission of Alaska into the Union—

(a) The analysis of chapter 5 of title 28, United States Code, immediately preceding section 81 of such title, is amended by inserting immediately after and underneath item 81 of such analysis, a new item to be designated as item 81A and to read as follows:

"81A. Alaska";

(b) Title 28, United States Code, is amended by inserting immediately after section 81 thereof a new section, to be designated as section 81A, and to read as follows:

"§ 81A. Alaska

"Alaska constitutes one judicial district.

"Court shall be held at Anchorage, Fairbanks, Juneau, and Nome.";

(c) Section 133 of title 28, United States Code, is amended by inserting in the table of districts and judges in such section immediately above the item: "Arizona • • • 2", a new item as follows: "Alaska • • • 1";

• • • • • • • • • • •

SEC. 13. No writ, action, indictment, cause, or proceeding pending in the District Court for the Territory of Alaska on the date when said Territory shall become a State, and no case pending in an appellate court upon appeal from the District Court for the Territory of Alaska at the time said Territory shall become a State, shall abate by the admission of the State of Alaska into the Union, but the same shall be transferred and proceeded with as hereinafter provided.

All civil causes of action and all criminal offenses which shall have arisen or been committed prior to the admission of said State, but as to which no suit, action, or prosecution shall be pending at the date of such admission, shall be

subject to prosecution in the appropriate State courts or in the United States District Court for the District of Alaska in like manner, to the same extent, and with like right of appellate review, as if said State had been created and said courts had been established prior to the accrual of said causes of action or the commission of such offenses; and such of said criminal offenses as shall have been committed against the laws of the Territory shall be tried and punished by the appropriate courts of said State, and such as shall have been committed against the laws of the United States shall be tried and punished in the United States District Court for the District of Alaska.

SEC. 14. All appeals taken from the District Court for the Territory of Alaska to the Supreme Court of the United States or the United States Court of Appeals for the Ninth Circuit, previous to the admission of Alaska as a State, shall be prosecuted to final determination as though this Act had not been passed. All cases in which final judgment has been rendered in such district court, and in which appeals might be had except for the admission of such State, may still be sued out, taken, and prosecuted to the Supreme Court of the United States or the United States Court of Appeals for the Ninth Circuit under the provisions of then existing law, and there held and determined in like manner; and in either case, the Supreme Court of the United States, or the United States Court of Appeals, in the event of reversal, shall remand the said cause to either the State supreme court or other final appellate court of said State, or the United States district court for said district, as the case may require: *Provided,* That the time allowed by existing law for appeals from the district court for said Territory shall not be enlarged thereby.

SEC. 15. All causes pending or determined in the District Court for the Territory of Alaska at the time of the admission of Alaska as a State which are of such nature as to be within the jurisdiction of a district court of the

United States shall be transferred to the United States District Court for the District of Alaska for final disposition and enforcement in the same manner as is now provided by law with reference to the judgments and decrees in existing United States district courts. All other causes pending or determined in the District Court for the Territory of Alaska at the time of the admission of Alaska as a State shall be transferred to the appropriate State court of Alaska. All final judgments and decrees rendered upon such transferred cases in the United States District Court for the District of Alaska may be reviewed by the Supreme Court of the United States or by the United States Court of Appeals for the Ninth Circuit in the same manner as is now provided by law with reference to the judgments and decrees in existing United States district courts.

SEC. 16. Jurisdiction of all cases pending or determined in the District Court for the Territory of Alaska not transferred to the United States District Court for the District of Alaska shall devolve upon and be exercised by the courts of original jurisdiction created by said State, which shall be deemed to be the successor of the District Court for the Territory of Alaska with respect to cases not so transferred and, as such, shall take and retain custody of all records, dockets, journals, and files of such court pertaining to such cases. The files and papers in all cases so transferred to the United States district court, together with a transcript of all book entries to complete the record in such particular cases so transferred, shall be in like manner transferred to said district court.

SEC. 17. All cases pending in the District Court for the Territory of Alaska at the time said Territory becomes a State not transferred to the United States District Court for the District of Alaska shall be proceeded with and determined by the courts created by said State with the right to prosecute appeals to the appellate courts created by said State, and also with the same right to prosecute ap-

peals or writs of certiorari from the final determination in said causes made by the court of last resort created by such State to the Supreme Court of the United States, as now provided by law for appeals and writs of certiorari from the court of last resort of a State to the Supreme Court of the United States.

SEC. 18. The provisions of the preceding sections with respect to the termination of the jurisdiction of the District Court for the Territory of Alaska, the continuation of suits, the succession of courts, and the satisfaction of rights of litigants in suits before such courts, shall not be effective until three years after the effective date of this Act, unless the President, by Executive order, shall sooner proclaim that the United States District Court for the District of Alaka established in accordance with the provisions of this Act, is prepared to assume the functions imposed upon it. During such period of three years or until such Executive order is issued, the United States District Court for the Territory of Alaska shall continue to function as heretofore. The tenure of the judges, the United States attorneys, marshals, and other officers of the United States District Court for the Territory of Alaska shall terminate at such time as that court shall cease to function as provided in this section.

* * * * * * * * * *

Approved July 7, 1958.

Alaska Omnibus Act

June 25, 1959. PUBLIC LAW 86-70, 73 Stat. 141

To amend certain laws of the United States in light of the admission of the State of Alaska into the Union, and for other purposes.

* * * * * * * * * *

FEDERAL JURISDICTION

SEC. 2. (a) Section 4 of the Act of July 7, 1958 (72 Stat. 339), providing for the admission of the State of Alaska into the Union, is amended by striking out the words "all such lands or other property, belonging to the United States or which may belong to said natives", and inserting in lieu thereof the words "all such lands or other property (including fishing rights), the right or title to which may be held by said natives or is held by the United States in trust for said natives".

(b) Section 6(e) of said Act is amended by striking out the word "legislative" and inserting in lieu thereof the word "calendar".

* * * * * * * * * *

White Act

Act of June 6, 1924, as Amended, 43 Stat. 464, 48 U.S.C. 221 *et seq.*

§ 221. Fishing areas; closed season; limitation on fishing.

For the purpose of protecting and conserving the fisheries of the United States in all waters of Alaska the Secretary of the Interior from time to time may set apart and reserve fishing areas in any of the waters of Alaska over which the United States has jurisdiction, and within such areas may establish closed seasons during which fishing may be limited or prohibited as he may prescribe. Under this authority to limit fishing in any area so set apart and reserved the Secretary may (a) fix the size and character of nets, boats, traps, or other gear and appliances to be used therein; (b) limit the catch of fish to be taken from any area; (c) make such regulations as to time, means, methods, and extent of fishing as he may deem advisable. * * *

* * * * * * * * * *

§ 222. Unlawful fishing in areas; no exclusive rights to be granted; citizens.

From and after the creation of any such fishing area and during the time fishing is prohibited therein it shall be unlawful to fish therein or to operate therein any boat, seine, trap, or other gear or apparatus for the purpose of taking fish; and from and after the creation of any such fishing area in which limited fishing is permitted such fishing shall be carried on only during the time, in the manner, to the extent, and in conformity with such rules and regulations as the Secretary prescribes under the authority herein given: *Provided,* That every such regulation made by the Secretary of the Interior shall be of general application with the particular area to which it applies, and that no exclusive or several right of fishery shall be granted therein, nor shall any citizen of the United States be denied the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary of the Interior. • • •

• • • • • • • • • • •

§ 226. Violation of fishing laws; punishment; forfeiture.

Any person, company, corporation or association violating any provisions of sections 221-224, 226-228 or 230-241 of this title, or of any regulation made under authority of said sections shall, upon conviction thereof be punished by a fine not exceeding $5,000 or imprisonment for a term of not more than ninety days in the county jail or by both such fine and imprisonment, and in case of the violation of section 233 of this title there may be imposed a further fine not exceeding $250 for each day the obstruction therein declared unlawful is maintained. Every boat, seine, net, trap, and every other gear and appliance used or employed in violation of said above-mentioned sections and all fish taken therein or therewith shall be forfeited to the United States and shall be seized and sold under the direction of the court in which the forfeiture is declared at public

auction and the proceeds thereof after deducting the expenses of sale shall be disposed of as other fines and forfeitures under the laws relating to Alaska. Proceedings for such forfeiture shall be in rem under the rules of admiralty. * * *

* * * * * * * * * * *

§ 227. Employees of Fish and Wildlife Service as peace officers.

For the purposes of sections 221-224, 226-228 and 232-234 of this title all employees of the Fish and Wildlife Service, designated by the Director, shall be considered as peace officers and shall have the same powers of arrest of persons and seizure of property for any violation of the provisions of said sections as have United States marshals or their deputies. * * *

* * * * * * * * * * *

§ 228. Territorial powers not abrogated or curtailed.

Nothing in sections 221-224, 226-228 and 232-234 of this title contained, nor any powers conferred by said sections upon the Secretary of the Interior, shall abrogate or curtail the powers granted the Territorial Legislature of Alaska to impose taxes or licenses, nor limit or curtail any powers granted the Territorial Legislature of Alaska by sections 21-24, 44, 45, 67-73, 74-90, and 145 of this title. * * *

* * * * * * * * * * *

ALASKA CONSTITUTION AND STATUTES:

The Constitution of Alaska

(Agreed upon by Delegates February 5, 1956; adopted by referendum of the Alaska electorate April 24, 1956; effective under the Statehood Act January 3, 1959.)

ARTICLE IV

The Judiciary

Section 1. The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law.

Section 2. The supreme court shall be the highest court of the State, with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court.

Section 3. The superior court shall be the trial court of general jurisdiction and shall consist of five judges. The number of judges may be changed by law.

* * * * * * * * * *

ARTICLE VIII

Natural Resources

* * * * * * * * * *

Section 15. No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State.

* * * * * * * * * *

ARTICLE XII

General Provisions

* * * * * * * * * *

Section 12. The State of Alaska and its people forever disclaim all right and title in or to any property belonging to the United States, or subject to its disposition, and not granted or confirmed to the State or its political subdivisions, by or under the act admitting Alaska to the Union. The State and its people further disclaim all right or title

in or to any property, including fishing rights, the right or title to which may be held by or for any Indian, Eskimo, or Aleut, or community thereof, as that right or title is defined in the act of admission. The State and its people agree that, unless otherwise provided by Congress, the property, as described in this section, shall remain subject to the absolute disposition of the United States. They further agree that no taxes will be imposed upon any such property, until otherwise provided by the Congress. This tax exemption shall not apply to property held by individuals in fee without restrictions on alienation.

SECTION 13. All provisions of the act admitting Alaska to the Union which reserve rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property, are consented to fully by the State and its people.

* * * * * * * * * *

ARTICLE XV

SCHEDULE OF TRANSITIONAL MEASURES

To provide an orderly transition from a territorial to a state form of government, it is declared and ordained:

* * * * * * * * * *

SECTION 2. Except as otherwise provided in this constitution, all rights, titles, actions, suits, contracts, and liabilities and all civil, criminal, or administrative proceedings shall continue unaffected by the change from territorial to state government, and the State shall be the legal successor to the Territory in these matters.

* * * * * * * * * *

SECTION 4. All officers of the Territory, or under its laws, on the effective date of this constitution shall continue to perform the duties of their offices in a manner consistent with this constitution until they are superseded by officers of the State.

* * * * * * * * * *

SECTION 17. Until the courts provided for in Article IV are organized, the courts, their jurisdiction, and the judicial system shall remain as constituted on the date of admission unless otherwise provided by law. When the state courts are organized, new actions shall be commenced and filed therein, and all causes, other than those under the jurisdiction of the United States, pending in the courts existing on the date of admission, shall be transferred to the proper state court as though commenced, filed, or lodged in those courts in the first instance, except as otherwise provided by law.

* * * * * * * * * *

SECTION 24. Ordinance No. 1 on ratification of the constitution, Ordinance No. 2 on the Alaska-Tennessee Plan, and Ordinance No. 3 on the abolition of fish traps, adopted by the Alaska Constitutional Convention and appended to this constitution, shall be submitted to the voters and if ratified shall become effective as provided in each ordinance.

SECTION 25. This constitution shall take effect immediately upon the admission of Alaska into the Union as a state.

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ORDINANCE No. 3

ABOLITION OF FISH TRAPS

SECTION 1. Each elector who offers to vote upon the ratification of the constitution may, upon the same ballot, vote on a third proposition, which shall be as follows:

"Shall Ordinance Number Three of the Alaska Constitutional Convention, prohibiting the use of fish traps for the taking of salmon for commercial purposes in the coastal waters of the State, be adopted?"

Yes ☐

No ☐

SECTION 2. If the constitution shall be adopted by the electors and if a majority of all the votes cast for and against this ordinance favor its adoption, then the following shall become operative upon the effective date of the constitution:

"As a matter of immediate public necessity, to relieve economic distress among individual fishermen and those dependent upon them for a livelihood, to conserve the rapidly dwindling supply of salmon in Alaska, to insure fair competition among those engaged in commercial fishing, and to make manifest the will of the people of Alaska, the use of fish traps for the taking of salmon for commercial purposes is hereby prohibited in all the coastal waters of the State."

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Rules of the Supreme Court of Alaska

PART IV. PRACTICE ON APPEAL—CIVIL CASES

Rule 7. APPEAL: TIME—NOTICE—BONDS.

(a) *When Taken.* The time within which an appeal may be taken to the supreme court shall be thirty (30) days from the entry of the judgment appealed from unless a shorter time is provided by law, except that in any action in which the state or an officer or agency thereof is a party, the time as to all parties shall be sixty (60) days from such entry, and except that upon a showing of excusable neglect based on a failure of a party to learn of the entry of the judgment the court from which the appeal is taken may, in any action, extend the time for appeal not exceeding thirty (30) days from the expiration of the original time herein prescribed.

* * * * * * * * * *

Rule 53. EFFECTIVE DATE.

These rules shall take effect on October 5, 1959.

Rule 54. Special Application of Rules.

(a) *Appeals From District Court.* These rules shall be applicable to appeals from the District Court of the District of Alaska which may be allowed in accordance with the provisions of Section 32 (4) of Chapter 50 SLA 1959, as amended by Chapter 151 SLA 1959.

(b) *Time for Filing Notice of Appeal.* The time for filing a notice of appeal as provided in these rules is extended so that the time for filing such notice will begin to run from the effective date of these rules instead of the effective date of the judgment.

(c) *Use of Appellate Records.* Insofar as appellate records, briefs, documents and proceedings have already been prepared in conformity with the federal rules and appellate practice on the effective date of these rules, they will be accepted by this court even though not in conformity with the rules otherwise applicable.

(d) *Cases of Hardship.* Where hardship is created by virtue of the change in procedure requirements or practices from federal courts to the supreme court, the latter, on motion, may grant such procedural relief as the circumstances may require.

* * * * * * * * * *

Dated at Juneau, Alaska, this 25th day of September 1959.

Session Laws of Alaska 1959

CHAPTER 17

An Act

Relating to prohibiting fish traps on lands owned by the State of Alaska; providing for restrictive covenants in the sale or lease of such lands; defining violations; prescribing penalties; repealing Ch. 154, SLA 1955; and providing an effective date.

Be it enacted by the Legislature of the State of Alaska:

Section 1. It shall be unlawful to erect, moor, or maintain fish traps, including but not limited to floating, pile driven or hand driven fish traps, on or over any lands or tidelands owned or hereafter acquired by the State of Alaska. Nothing in this section shall prevent the maintenance, use or operation of small, hand-driven fish traps of the type ordinarily used on rivers of Alaska which are otherwise legally maintained and operated in or above the mouth of any stream or river in Alaska.

Sec. 2. The lease or sale of any such State lands or tidelands shall contain a restrictive covenant in keeping with the intent of this Act.

Sec. 3. A violation of this Act shall be a misdemeanor and shall be punishable by imprisonment not to exceed six months or by fine not to exceed $1,000.00 or by both such fine and imprisonment.

Sec. 4. Ch. 154 SLA 1955 is hereby repealed.

Sec. 5. This Act shall take effect immediately upon its passage and approval or upon its becoming law without such approval.

Approved February 25, 1959

* * * * * * * * * * *

CHAPTER 50

An Act

Relating to the supreme and superior courts of the State of Alaska; providing for the promulgation of rules of civil and criminal proceedings within the courts of the State of Alaska; providing for their jurisdiction, the nomination, appointment, and qualification of justices and judges; providing for periodical approval by the voters; providing for the filling of vacancies and removal of justices and judges; providing for the com-

pensation of justices and judges; providing for the administration of the court system; and providing for an effective date.

• • • • • • • • • • •

Article III. Organization

Sec. 31. Commencement and Transfer of Causes.

(1) The State courts shall be deemed organized for the purpose of transferring causes as provided in Section 17, Article XV of the Constitution of the State of Alaska, on the 3rd day of January, 1962. Provided, however, that causes may be commenced, filed and determined in the State courts in each judicial district at the time of the appointment of one or more judges for such district.

(2) The jurisdiction of the courts of the State in this Act provided shall be exclusive from and after the 3rd day of January, 1962 but prior to that date shall be non-exclusive, and nothing in this Act shall diminish or deprive the District Court of the State of Alaska or the Court of Appeals or the Supreme Court of the United States of jurisdiction as provided by Public Law 508, 85th Congress, and other laws applicable thereto.

Sec. 32. Declaration of Intent and Method of Transition. It is the intent of the Legislature by the passage of this Act to provide for the organization of the State courts in an orderly manner so that the same will be completed on or before January 3, 1962 and so that during the intervening period advantage may be taken of the district and appellate structure referred to in Public Law 508, 85th Congress. To effect this intention the State courts shall be organized in the following manner:

• • • • • • • • • • •

(3) Upon the appointment of the first supreme court justices, the supreme court shall, as soon as may be practical, consider the reports and studies of the Judicial

Council and thereafter make and promulgate such rules governing the administration of courts and the practice and procedure in civil and criminal cases as the court may deem appropriate. When the court has adopted such rules governing causes and procedure of the supreme and superior courts, the chief justice shall so advise the Judicial Council and within thirty (30) days thereafter the Judicial Council shall meet and submit to the Governor the names of the persons nominated for some or all of the superior court judges. The Judicial Council may submit the names of all persons nominated as superior court judges for all districts at this time or may submit the names of persons nominated in less than all of the judicial districts or less than all judges provided for in a district in such manner as will provide a gradual series of appointments consistent with the availability of physical facilities and court personnel.

(4) Notwithstanding the provisions of subsections (1), (2) and (3) of this section, in the event that either: a court of competent jurisdiction, by final judgment, declares that the District Court of the State of Alaska lacks jurisdiction to determine causes arising under the laws of the State, notwithstanding the provisions of Public Law 508, 85th Congress; or the President of the United States, by executive order, terminates the jurisdiction of the District Court of the State of Alaska, the Judicial Council shall forthwith meet and submit to the Governor the names of the persons nominated as justices or judges of all of the supreme and one or more or all superior courts of the State and in any event shall submit all of said names prior to January 3, 1962.

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Approved March 19, 1959

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CHAPTER 95

An Act

Prohibiting the operating of fish traps within the State of Alaska; amending Chapter 17, SLA, 1959; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Alaska:

Section 1. It shall be unlawful to operate fish traps, including but not limited to floating, pile-driven or hand-driven fish traps, in the State of Alaska on or over any of its lands, tidelands, submerged lands, or waters; provided nothing in this section shall prevent the operation of small hand-driven fish traps of the type ordinarily used on rivers of Alaska which are otherwise legally operated in or above the mouth of any stream or river in Alaska; nor shall this Act be construed so as to violate Sec. 4 of Public Law 85-508, 72 Stat. 339, which constitutes a compact between the United States and Alaska, pursuant to which the State disclaims all right and title to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called Natives) or is held by the United States in trust for said Natives.

Sec. 2. Section 1 of Chapter 17, SLA 1959, is hereby amended to read as follows:

Section 1. It shall be unlawful to erect, moor, or maintain fish traps, including but not limited to floating, pile-driven or hand-driven fish traps, on or over any lands, tidelands, submerged lands or waters owned or hereafter acquired by the State of Alaska. Nothing in this section shall prevent the maintenance, use or operation of small, hand-driven fish traps of the type ordinarily used on rivers of Alaska which are otherwise legally maintained and operated in or above the mouth of any stream or river in Alaska.

Sec. 3. Sec. 2 of Chapter 17, SLA 1959, is hereby repealed.

Sec. 4 Sec. 3 of Chapter 17, SLA 1959, is hereby amended to read as follows:

Sec. 3. A violation of this Act shall be a misdemeanor and shall be punishable by imprisonment not to exceed one year or by fine not to exceed $5,000.00 or by both such imprisonment and fine.

Sec. 5. A violation of this Act shall be a misdemeanor and shall be punishable by imprisonment not to exceed one year, or by a fine not to exceed $5,000.00, or by both such imprisonment and fine.

Sec. 6. This Act shall take effect immediately upon its passage and approval or upon its becoming law without such approval.

Approved April 17, 1959

* * * * * * * * * *

CHAPTER 151

An Act

Relating to the organization of the supreme and superior courts of the state; amending subsection (4) of Sec. 32 and subsection (2) of Sec. 31 of Chap. 50, SLA 1959; and providing for an effective date.

Be it enacted by the Legislature of the State of Alaska:

Section 1. Subsection (4), Sec. 32, Ch. 50, SLA 1959, is hereby amended to read as follows:

(4) Notwithstanding the provisions of subsections (1), (2) and (3) of this section, in the event that either: a court of competent jurisdiction, by final judgment, declares that the District Court of the District of Alaska lacks jurisdiction to determine causes arising under the laws of the State, notwithstanding the provisions of Pub-

lic Law 508, 85th Congress; or the President of the United States, by executive order, terminates the jurisdiction of the District Court of the District of Alaska; the Judicial Council shall forthwith meet and submit to the Governor the names of the persons nominated as justices or judges of all of the supreme and one or more or all superior courts of the State and in any event shall submit all of said names prior to January 3, 1962. In the event that a court of competent jurisdiction, by final judgment, declares that the United States Court of Appeals for the Ninth Circuit lacks jurisdiction to hear appeals from the District Court of the District of Alaska, the Judicial Council shall forthwith meet and submit to the Governor the names of the persons nominated as justices of the supreme court and appeals from the District Court of the District of Alaska may be made to the State Supreme Court. If, upon the occurrence of any of the events set forth in this subsection, the members of the first Judicial Council have not been appointed, the Governor shall forthwith fill the initial vacancies.

Sec. 2. Subsection (2) of Sec. 31 of Ch. 50, SLA 1959 is hereby amended to read as follows:

(2) The jurisdiction of the courts of the State in this Act provided shall be exclusive from and after the 3rd day of January, 1962 but prior to that date shall be non-exclusive, and nothing in this Act shall diminish or deprive the District Court of the District of Alaska or the Court of Appeals or the Supreme Court of the United States of jurisdiction as provided by Public Law 508, 85th Congress, and other laws applicable thereto.

Sec. 3. This Act shall take effect upon its passage and approval or upon its becoming law without such approval.

Approved May 1, 1959

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PROCLAMATIONS OF THE PRESIDENT:

24 Fed. Reg. 81, Fed. Reg. Jan. 6. 1959

ADMISSION OF THE STATE OF ALASKA INTO THE UNION

By the President of the United States of America

A Proclamation

WHEREAS the Congress of the United States by the act approved on July 7, 1958 (72 Stat. 339), accepted, ratified, and confirmed the constitution adopted by a vote of the people of Alaska in an election held on April 24, 1956, and provided for the admission of the State of Alaska into the Union on an equal footing with the other States of the Union upon compliance with certain procedural requirements specified in that act; and

WHEREAS it appears from information before me that a majority of the legal votes cast at an election held on August 26, 1958, were in favor of each of the propositions required to be submitted to the people of Alaska by section 8 (b) of the act of July 7, 1958; and

WHEREAS it further appears from information before me that a general election was held on November 25, 1958, and that the returns of the general election were made and certified as provided in the act of July 7, 1958; and

WHEREAS the Acting Governor of Alaska has certified to me the results of the submission to the people of Alaska of the three propositions set forth in section 8 (b) of the act of July 7, 1958, and the results of the general election; and

WHEREAS I find and announce that the people of Alaska have duly adopted the propositions required to be submitted to them by the act of July 7, 1958, and have duly elected the officers required to be elected by that act:

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America, do hereby declare and

proclaim that the procedural requirements imposed by the Congress on the State of Alaska to entitle that State to admission into the Union have been complied with in all respects and that admission of the State of Alaska into the Union on an equal footing with the other States of the Union is now accomplished.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington at one minute past noon on this third day of January in the year of our Lord nineteen hundred and fifty-nine, and of the Independence of the United States of America the one hundred and eighty-third.

[SEAL]

DWIGHT D. EISENHOWER

By the President:
CHRISTIAN A. HERTER,
Acting Secretary of State.

* * * * * * * * * * *

25 Fed. Reg. 1584, Fed. Reg. Feb. 24, 1960

Executive Order 10867

READINESS OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA TO ASSUME THE FUNCTIONS IMPOSED UPON IT

WHEREAS the act of July 7, 1958, 72 Stat. 339, relating to the admission of the State of Alaska into the Union, provides that the United States District Court for the Territory of Alaska shall continue to function as theretofore for a period of three years after the effective date of that act, unless the President, by Executive order, shall sooner proclaim that the United States District Court for the District of Alaska, established in accordance with the

provisions of that act, is prepared to assume the functions imposed upon it; and

WHEREAS that act further provides that its provisions relating to the termination of the jurisdiction of the District Court for the Territory of Alaska, the continuation of suits, the succession of courts, and the satisfaction of the rights of litigants in suits before such courts shall not be effective until the expiration of the above-mentioned three-year period or until such Executive order is issued; and that the tenure of the judges, the United States Attorneys, Marshals, and other officers of the United States District Court for the Territory of Alaska shall terminate at such time as that court shall cease to function; and

WHEREAS, I have appointed, by and with the advice and consent of the Senate, and commissioned the Honorable Walter N. Hodge to be United States District Judge for the District of Alaska, and he has taken his oath of office; and

WHEREAS Judge Hodge has appointed an acting United States Attorney, an acting United States Marshal, and other court officers; and

WHEREAS the United States District Court for the District of Alaska is now prepared to assume the functions imposed upon it:

NOW, THEREFORE, by virtue of the authority vested in me by section 18 of the said act of July 7, 1958, I hereby proclaim that the United States District Court for the District of Alaska is prepared to assume the functions imposed upon it. Accordingly, the jurisdiction of the District Court for the Territory of Alaska and the tenure of the judges, the United States Attorneys, Marshals, and other officers of that court are now terminated.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,

February 20, 1960.

Bureau of Indian Affairs Release, April 7, 1960

SEATON ANNOUNCES PROPOSED FEDERAL REGULATIONS TO PROTECT COMMERCIAL FISHING RIGHTS OF ALASKA NATIVES

A proposed new set of Federal regulations under which the commercial fishing rights of the Indians, Eskimos, and Aleuts of Alaska may be exercised, if they choose to utilize such rights, was announced today by Secretary of the Interior Fred A. Seaton.

The proposal is being forwarded to the *Federal Register* for publication in the near future. Comments are invited from interested parties for a period of 30 days after the date of publication.

The Department's sole purpose in proposing the regulations, Secretary Seaton emphasized, is to permit the Alaska natives to use there fishing rights which were preserved for the natives by Section 4 of the Alaska Statehood Act, if they choose to do so.

Secretary Seaton pointed out that when the Alaska Statehood Act was being considered by the Congress, the Department of Justice informed the Congress that the inclusion of a reference to "fishing rights" could well result in "raising an implication that there is a 'right or title' to fishing rights in the natives of Alaska" despite prior court holdings to the contrary.

"The Supreme Court," the Secretary stated, "has already enjoined the State of Alaska from interfering with native fish traps until it is determined whether these traps involve native fishing rights protected by the Statehood Act."

"The best legal advice I have been able to obtain from the Department of Justice and the Department of the Interior," the Secretary said, "has been to the effect that these fish traps are 'fishing rights' protected by the Statehood Act. Under the circumstances, I have no alternative but to permit these natives to operate these traps if they choose to do so.

"Congress created these rights and we cannot, by arbitrary or capricious action, abolish them. If the legal conclusions of lawyers in the Department of Justice and the Department of the Interior are correct—as reflected in the position taken in the Supreme Court—then only Congress could abolish the right created by the Congress for these natives to operate fish traps if they so cho[o]se. I am further advised that such action by the Congress might also raise questions of just compensation.

"As recently as 1952, 334 fish traps were operated in Alaska waters under regulations issued by Secretary Oscar L. Chapman. The Eisenhower Administration has complied with the wishes of the Alaskan electorate and eliminated all fish traps but these native traps, which I am advised I cannot eliminate," the Secretary stated.

"Furthermore," Secretary Seaton said, "I would not eliminate the rights of any native by administrative action without giving him his day in court. These native people have taken their cause to the highest court in our land and I am not going to act so as to deny them the very rights they seek to protect."

The major difference between the existing State regulations and the proposed new Federal rules relates to the use of commercial fish traps by the native people. No provision for the use of such traps is made by the State regulations. The Federal proposal limits the native people to the "traps used in the 1959 season."

The regulations also describe the location of 21 trap sites of the Angoon Community Association, the organized village of Kake and the Metlakatla Indian Community, which have been used at various times in the past by the three native communities.

The proposed regulation provides that during the 1960 fishing season and until otherwise authorized the villages may operate only 11 traps, the same number as were authorized in 1959 in accordance with the Department's position that the intent of the Alaska Statehood legislation was to retain in "status quo" the rights of the natives.

Prior to the 1959 fishing season the native communities brought legal action to enjoin the State of Alaska from interfering with the exercise of the fishing rights which were preserved for them by the Statehood Act. A temporary injunction was granted by the United States Supreme Court and will remain in effect until the Court issues a final decision in the case.

Under protection of the temporary injunction the native villages operated 11 fish traps during the 1959 season—four at Metlakatla, four at Kake, and three at Angoon.

The sole purpose of the proposed regulations is to spell out certain fishing rights which were secured to the Alaska natives under Federal law. In this connection, Secretary Seaton explained, any fishing activities by the natives in violation of either the Federal and the State regulations would be subject to penalties imposed by State law; however, encroachment of the natives' rights may result in the utilization of penalties provided by Federal law.

Indian Fishing Regulations in Alaska

25 Fed. Reg. 3079, April 9, 1960

Notice is hereby given that pursuant to the obligation imposed upon, and the authority vested in, the Secretary

of the Interior by Section 2 and 9 of Title 25, and Section 485 of Title 5, U.S. Code, and Section 4 of the Act of July 7, 1958, 72 Stat. 339 amended, 73 Stat. 141, it is proposed to amend 25 CFR by adding a new part 88 as set forth below. The purpose of these amendments is to protect certain fishing rights which have long been recognized; which derive from the Act of June 6, 1924, as amended, 48 U.S.C. 221 et seq., other Federal statutes, regulations and custom; and which were secured to the Alaska Eskimos, Indians and Aleuts by Section 4 of the Alaska Statehood Act of July 7, 1958.

It is the policy of the Department of the Interior whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions or objections with respect to the proposed amendments, to the Commissioner, Bureau of Indian Affairs, Washington 25, D. C., within 30 days after the date of publication of this notice in the Federal Register.

Part 88, reading as follows, is added to 25 CFR, Subchapter H:

§ 88.1 *Scope.* These regulations implement section 4 of the Act of July 7, 1958, 72 Stat. 339, as amended, by declaring existing fishing rights of Indians in Alaska and providing for the protection and control thereof. Provisions for those rights derive from the Act of June 6, 1924, as amended, 48 U.S.C. 221 et seq., and the limitations and sanctions necessary to preserve such rights are included herein. These regulations are permissive, but shall not be construed as a limitation upon any native rights not mentioned in this part.

§ 88.2 *Restrictions on Native Indian traps.*

(a) Not more than the 21 salmon fish-trap sites heretofore recognized as Indian salmon fish-trap locations as hereinafter described may be utilized for the purpose

of salmon trap fishing by Indian villages, within the following described waters at the sites described. Subject to the limitations of paragraph (e) of this section, traps owned and operated by the native villages may be operated at any time within a described area when salmon net fishing is permitted in any part of such area, or adjacent districts, by the State of Alaska:

(b) Angoon Community Association: Within all waters in Chatham Strait between a true eastward line from South Passage Point and a true westward line from Point Gardnes to Baranof Island; and the waters of Peril Strait north and east of Sergius Narrows, including Hoonah Sound, at the following sites:

(1) Chichagof Island at 57°36′16″ north latitude, 134° 51′34″ west longitude.

(2) Admiralty Island at 57°22′28″ north latitude, 134° 34′18″ west longitude.

(3) Killisnoo Island at 57°28′15″ north latitude, 134° 36′35″ west longitude.

(4) Admiralty Island at 57°13′52″ north latitude, 134° 39′05″ west longitude.

(c) Organized Village of Kake: All waters, except (1) those within a line from Point Bishop to 58°11′28″ north latitude, 134°5′ west longitude, (2) northeast of a line from Point Stylenan to Point Anmer, and (3) waters south of a line from Point Ellis to Patterson Point; within a line following the latitude of Cape Decision easterly to Cape Decision, thence following the watershed on Kuiu Island to 56°40′ north latitude, 133°44′15″ west longitude, thence east across Koku Strait, thence across Kupreanof Island, passing north of Duncan Canal, to 56°54′ north latitude, thence to Horn Cliffs, thence to Castle Mountain, thence following the international boundary to Mount Ogilvie, thence to the northern extremity of Shelter Island, thence to the northern extremity of Mansfield Peninsula,

thence following the watersheds on Mansfield Peninsula and Admiralty Island to the southern extremity of Point Gardner, thence west to the watershed on Baranof Island, thence following the watershed to Cape Ommaney, thence the latitude of Cape Ommaney projected westward:

(1) Stephens Passage at 57°21′70″ north latitude, 133° 27′02″ west longitude.

(2) Frederick Sound at 57°11′27″ north latitude, 133° 34′02″ west longitude.

(3) Frederick Sound at 57°10′52″ north latitude, 133° 32′44″ west longitude.

(4) Admiralty Island at 57°18′40″ north latitude, 133° 57′21″ west longitude.

(5) Admiralty Island at 57°10′29″ north latitude, 134° 12′53″ west longitude.

(6) Herring Bay at 57°07′21″ north latitude, 134°19′45″ west longitude.

(7) Admiralty Island at 57°04′02″ north latitude, 134° 25′20″ west longitude.

(8) Kupreanof Island at 57°01′23″ north latitude, 134° 02′50″ west longitude.

(9) Kuiu Island at 56°55′52″ north latitude, 134°16′08″ west longitude.

* * * * * * * * * *

(e) During the 1960 fishing season and until the Secretary or his authorized representative determines otherwise, the villages may operate traps only at the following sites: Angoon: (1) (2) and (4); Kake: (3) (4) (8) and (9); Metlakatla: (2) (3) (4) and (6).

§ 88.3 *Size and operation of Indian salmon traps.*

(a) No trap shall extend more than 900 feet from shore to the outer face of the pot as measured at mean high tide when any part is in a greater depth of water than 100 feet.

(b) Poles shall be permanently secured to the webbing at each side of the mouth of the pot tunnel and shall extend from the tunnel floor to a height of at least 4 feet above the water. A draw line shall be reeved through the lower end of both poles and the top of one. During any period when commercial net fishing for salmon is prohibited by the State of Alaska in the waters open to trap fishing as above described, the tunnel walls shall be overlapped as far as possible, the line pulled tight and both secured so as to close the trap to fishing. In addition 25 feet of the webbing of the heart on each side next to the pot shall be lifted or lowered in such manner as to permit the free passage of salmon and other fish.

* * * * * * * * * *

§ 88.8 *Modification of regulations.*

The regulations in this part will be modified from time to time as the Secretary of the Interior may deem necessary. The native Indians and Indian villages of Alaska shall be governed by these regulations in the waters where they apply or by the regulations of the State of Alaska, whichever are least restrictive to their fishing operations.

§ 88.9 *Enforcement.* Fishing activities in violation of these regulations will be subject to the sanctions imposed by the Act of June 6, 1924, as amended, 48 U.S.C. 226.

s/ FRED A. SEATON
Secretary of the Interior

April 6, 1960

Statement of All Fish Traps Indian and Non-Indian Operated in Alaska Period 1954 Through 1959

UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
BUREAU OF COMMERCIAL FISHERIES
WASHINGTON 25, D. C.

April 13, 1960

John Cragun, Esq.
744 Jackson Place
Washington, D. C.

Dear Mr. Cragun:

Mr. Daniel M. Singer has requested that I provide you the following information concerning the total number of fish traps operated in Alaska in each of the years 1954 through 1959:

1954	216
1955	203
1956	247
1957	221
1958	243
1959	11

Sincerely yours,

s/ JOHN I. HODGES
John I. Hodges, Chief
Branch of Resources Management